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IN THE

Supreme Court of the United States

OCTOBER TERM, 1933

No. 663.

CHARLES GAY, JR., RECEIVER OF SAVANNAH & ATLANTA RAILWAY,
Petitioner,

against

MAJOR RUFF,
Respondent.

Certiorari to United States Circuit Court of Appeals for the Fifth Circuit.

BRIEF OF W. R. C. COCKE AND JAMES F. WRIGHT, ATTORNEYS FOR LEGH R. POWELL, JR. AND HENRY W. ANDERSON, AS RECEIVERS OF SEABOARD AIR LINE RAILWAY COMPANY, AS AMICI CURIAE.

W. R. C. COCKE
JAMES F. WRIGHT

Attorneys for Legh R. Powell, Jr. and Henry W. Anderson, as Receivers of Seaboard Air Line Railway Company.

Norfolk, Va.

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The brief for the petitioner sets forth quite clearly and admirably the narrow issue involved here in this cause. It is, therefore, needless that we should restate the contentions in detail. While the issue here involved is one of serious importance, the question presented has been clearly presented by the brief for the petitioner. Our motion for leave to file a brief as *amici curiae* was designed to emphasize the practical import-

ance of the question before the court and to add such argument of a non-repetitive character as would serve to emphasize what we believe to be the logic of petitioner's position.

I.

The amendment of August 23, 1916 to Section 33 of the Judicial Code needs no interpretation.

> "A legislative intention to be efficient as law must be set forth in a statute; it is therefore a written law. How the intention is to be ascertained is only answered by the principles and rules of exposition. If a statute is plain, certain and unambiguous, *so that no doubt arises from its own terms as to its scope and meaning, a bare reading suffices; then interpretation is needless.* And where the intention of a statute has been ascertained by the application of the rules of interpretation, they have served their purpose, for all such rules are intended to reach that intent. The sole authority of the legislature to make laws is the foundation of the principle that courts of justice are bound to give effect to its intention. When that is plain and palpable they must follow it implicitly. The rules of construction with which the books abound *apply only where the words used are of doubtful import;* they are only so many lights to assist the courts in arriving with more accuracy at the true interpretation of the intention. This is true whether the statute be public or private, general or special, remedial or penal. These rules are a part of the law of the land equally with the statutes themselves, and not much less important. The function of such interpretation unrestrained by settled rules

> would introduce great uncertainty, and would involve a power virtually legislative. When a doubt arises upon the construction of the words it is the duty of the court to remove the doubt by deciding it; and when the court has given its decision, the point can no longer be considered doubtful."
>
> *Lewis' Sutherland Statutory Construction* (2nd edition), Sec. 363. (Italics ours here and elsewhere.)

It is manifest that the language of the amendment of August 23, 1916, is so thoroughly free from ambiguity as to render so-called interpretation entirely unnecessary. The language of the statute is that the specified civil suit or criminal prosecution may be removed by the defendant officer into the proper district court whenever the act on which it is founded shall have been "any act done under color of his office or in the performance of his duties as such officer." The Circuit Court of Appeals in its opinion in this case clearly admits that the act of the petitioner as receiver of Savannah & Atlanta Railway of which the respondent complains was clearly done by the receiver under color of his office or in performance of his duties as such officer. It is therefore unnecessary to dilate upon the legal meaning of the term "color of office." The vital defect in the reasoning of the Circuit Court of Appeals is the substitution *of its conception of* the report of a legislative committee for the statute itself. The use by the Circuit Court of Appeals of the report of the House Committee on the Judiciary is not in order to interpret or construe Section 33 of the Judicial Code but to destroy it in one of its essential phases. This is not a permissible method of statutory

construction. It so was indicated by this Court in *United States* v. *Goldenburg*, 168 U. S. 95, 18 Sup. Ct. Rep. 3, where the Court said:

> "The primary and general rule of statutory construction is that the intent of the law-maker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no fuction of legislation, and simply seek to ascertain the will of the legislator. It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise where there are cogent reasons for believing that the letter does not fully and accurately disclose the intent. No mere omission, *no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute.*"

The use of legislative journals and committee reports may be indulged in where a genuine doubt exists as to the meaning of the language of statutes but not otherwise. In a decision by this court in 1929 the following unequivocal statement of the rule was made:

> "Where doubt exists and construction is permissible, reports of the committees of Congress and statements by those in charge of the measure, and other like extraneous matter, may be taken into consideration to aid in the ascertainment of the true legislative intent. But where the language of an enactment is clear, and construction according to its terms does not lead to absurd or impracticable consequences, the words employed are to be taken

as the final expression of the meaning intended. And in such cases legislative history may not be used to support a construction that adds to or takes from the significance of the words employed."

United States, et al. v. *Missouri Pacific R. Co.*, 278 U. S. 269.

II.

Had the act of August 23, 1916, amending Judicial Code Section 33, not already become law and were the Congress now considering such an Act, the genius of the law would require that it conform to the construction placed upon it by the district court in the cause.

While the respondent (appellant in the court below) contended in the district court that the petitioner was not an "officer of the court" within the meaning of the amendment of August 23, 1916, both the District Court and Circuit Court of Appeals held otherwise. There can be no question that petitioner was and is an officer of the United States District Court for the Southern District of Georgia by virtue of the appointment as receiver of the Savannah & Atlanta Railway. (*Booth* v. *Clark*, 17 Howard, 322, 330; *Milwaukee & M. R. Co.* v. *Sutter*, 2 Wall. 510, 519). To hold then that such an officer should be denied the protection of the courts of the United States while at the same time other officers of such courts are accorded that protection is inconsistent with the spirit of the legislation.

The intent and spirit of Section 33 of the Judicial Code, as amended, is that the courts shall control and,

if need be, protect those intrusted with the discharge of the cares and responsibilities of the appointing courts over trust property in their keeping. If the power of the courts of the United States to control and protect the officers appointed by them is held to extend to some but not to all such officers, then the intent of the law is defeated.

The Federal statutes indicate the clear purpose of Congress to vest the district courts in their administration of receiverships with control not only of the properties of the receivership estate, but also over the proceedings and judgments that might affect the assets in the custody and control of the receivers. Thus, Section 66 of the Judicial Code provides:

> "*Suits against receiver.* Every receiver or manager of any property appointed by any court of the United States may be sued in respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; *but such suit shall be subject to the general equity jurisdiction of the court in which such manager or receiver was appointed so far as the same may be necessary to the ends of justice.*"

Thus, even judgments of a court other than the court appointing the receivers may not conclusively adjudicate the liabilities of the latter if in the sound judgment of the courts of appointment equity and the proper administration of the receivership estate prohibit.

The reasons for according control over judgments rendered against receivers by courts other than the

courts of appointment are equally appropriate to support the right to remove suits into the Federal courts, where the law is more uniformly interpreted under the supervisory jurisdiction of this court and both plaintiff and defendant receivers wherever sued will have their rights adjudicated by those tribunals.

The essential purpose of Section 33, as amended, was to protect the Federal sovereignty in respect of matters within its special sphere. Accordingly, there is no greater basic reason for permitting Federal officers other than receivers to remove causes against them than for permitting receivers to do so.

A contention somewhat analogous to that of the appellee was made with reference to the meaning of the word "person" as employed in the Fourteenth Amendment to the Constitution of the United States. It was sought to establish the doctrine that a corporation is not a "person" and therefore not entitled to the protection contemplated by that amendment. But it was manifest that the spirit of the amendment admitted of no such narrow definition. To give partial protection, to permit partial injustices by leaving unprotected numberless persons created by law, would clearly be destructive of the spirit of equality that the amendment proclaimed. Hence, it was decided in *Charlotte, Columbia & Augusta Railroad Co.* v. *Gibbs*, 142 U. S. 386, that private corporations are persons within the meaning of the amendment. The purpose of the amendment demanded that construction. The intent of the Act of August 23, 1916, amending Judicial Code Section 33, by the same process of reasoning demands that all officers of the courts of the United States be accorded equal recourse to the courts of the

same judicial system. If all such officers are not equally accorded the protection of the law as written, then the phrase "any officer" as used in the law is accorded a limited meaning not found in either the language or in the evident purpose of the law.

The act of August 23, 1916, amendatory of Judicial Code Section 33 is a procedural and remedial statute and as such is to be liberally construed. But beyond this elemental principle there is the further rule of law that procedural statutes should be given a construction which will preserve the essentials of harmony and consistency in the judicial system. (*Federal Credit Co.* v. *Zeperrick*, 153 Miss. 489, 120 So. 173; *Henovic* v. *New York Central & H. R. R. Co.*, 154 N. Y. 278, 48 N. E. 525). To hold that "*any* officer of the courts of the United States" cannot remove to a Federal court a civil suit or criminal prosecution commenced against him in a state court on account of an act done under color of his office is to create, in a measure, disharmony and inconsistency in the Federal judicial system.

Respectfully submitted,

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February 2, 1934. *Norfolk, Va.*